

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RICHARD C. HUNT,)	
)	
Plaintiff,)	
v.)	C. A. No. 06-324-***
)	
BRIAN EMIG,)	JURY TRIAL REQUESTED
)	
Defendant.)	

DEFENDANT BRIAN EMIG’S MOTION TO CONSOLIDATE

Defendant Brian Emig (“Defendant”), by the undersigned counsel, hereby moves to consolidate the instant action, *Hunt v. Emig*, with the related matter pending in this Court, *Hunt v. FCM*, C.A. No. 04-1417-***. In support of this Motion, Defendant states as follows:

1. *Hunt v. FCM* and *Hunt v. Emig* are prisoner civil rights actions arising from a series of events which occurred at Howard R. Young Correctional Institution (“HRYCI”). In the original Complaint in *Hunt v. FCM*, filed on November 3, 2004, Plaintiff alleged that First Correctional Medical (“FCM”) failed to provide him with proper and timely care in connection with an assault by Correctional Officer Emig. [D.I. 1]. In the Amended Complaint, Plaintiff specified that his jaw was broken on September 17, 2004 at HRYCI [D.I. 6]. He alleged that medical staff was deliberately indifferent to his medical needs related to his broken jaw. He also asserted that the Commissioner of the Department of Correction, Defendant Stan Taylor, and HRYCI Warden, Defendant Raphael Williams, were aware of his medical situation and elected not to intervene.

2. All three defendants in *Hunt v. FCM* were served with the Amended Complaint. [D.I. 19, 20, 22]. State Defendants answered the Amended Complaint on April 4, 2006. [D.I. 24]. To date, FCM has not entered an appearance. There is no scheduling order or trial date in

Hunt v. FCM.

3. The Complaint in *Hunt v. Emig*, C.A. No. 06-324-***, was filed on May 18, 2006. [D.I. 2]. Plaintiff alleged that on September 17, 2004, he was struck in the jaw by Defendant Correctional Officer Brian Emig.¹ He claimed that, although he reported the incident to a supervisor, he did not receive medical care that evening. He was subsequently diagnosed with a fractured jaw. *Id.*

4. There is a Scheduling Order in place in *Hunt v. Emig* [D.I. 20]. The discovery cut-off is May 1, 2007, dispositive motions are due June 1, 2007 and a two day jury trial is scheduled for December 17, 2007.

5. Rule 42(a) of the Federal Rules of Civil Procedure provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

6. Rule 42(a) gives this Court broad powers to consolidate actions involving common questions of law or fact if, in its discretion, such consolidation would facilitate the administration of justice. *Ellerman Lines. Ltd. v. Atlantic & Gulf Stevedores, Inc.*, 339 F.2d 673, 675 (3d Cir. 1964), *cert. denied*, 382 U.S. 812 (1965). The mere existence of common issues, a requirement for consolidation, does not mandate consolidation. *Rohm & Haas Co. v. Mobil Oil Corp.*, 525 F. Supp. 1298, 1309 (D. Del. 1981). Rather, the savings of time and effort gained through consolidation must be balanced against the inconvenience, delay or expense that may result from simultaneous disposition of the separate cases. *Id.* The proper administration of

¹ Plaintiff also named Officer D'Angelo as a defendant. He was dismissed from the case by Court order. [D.I. 7].

justice requires that matters be resolved without unnecessary cost or delay. *Id.*

7. Richard Hunt is the plaintiff in both *Hunt v. Emig* and *Hunt v. FCM*. The cases arise from the same factual setting: Plaintiff claims that he was assaulted by Officer Emig and that he subsequently was denied proper medical care. Both cases will necessarily address how the injury occurred, the nature of the injuries, and the nature of the medical treatment. In addition, there will be significant discovery overlap, particularly in terms of the medical treatment and Plaintiff's claimed damages. Overlapping parties, similar claims based on common facts and transactions, and discovery overlap all weigh in favor of consolidation. *See U.S. v. Dentsply Intern., Inc.*, 190 F.R.D. 140, 143 (D. Del. 1999); *Waste Distillation Technology, Inc. v. Pan American Resources, Inc.*, 775 F. Supp. 759, 761 (D. Del. 1991).

8. Further, because the claims in the two cases are similar, and the parties and discovery overlap, consolidation will save time and effort and avoid inconvenience, delay and expense.

9. Thus, for the reasons set forth herein, *Hunt v. FCM* and *Hunt v. Emig* should be consolidated pursuant to Fed. R. Civ. P. 42(a).

WHEREFORE, Defendant Brian Emig respectfully requests that this Honorable Court grant his Motion to Consolidate and enter an Order in the form attached hereto.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Eileen Kelly
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Dated: January 9, 2007

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RICHARD C. HUNT,)	
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Plaintiff,)	
v.)	C. A. No. 06-324-***
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BRIAN EMIG,)	JURY TRIAL REQUESTED
)	
Defendant.)	

ORDER

IT IS SO ORDERED, this _____ day of _____, 2007, that Defendant Brian Emig's Motion to Consolidate is hereby **GRANTED**.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2007, I electronically filed *Defendant Brian Emig's Motion to Consolidate* with the Clerk of Court using CM/ECF. I hereby certify that on January 9, 2007, I have mailed by United States Postal Service, the document to the following non-registered party: Richard Hunt.

/s/ Eileen Kelly
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